

FEDERAL ELECTION COMMISSION

In the matter of : Frist 2000, Inc.

William H. Frist, M.D.

M. Lee Barfield, Treasurer

Linus Catignani, Assistant Treasurer

Dawn Perkinson, Treasurer

MUR No.: 5669

COMPLAINT

1. Citizens for Responsibility and Ethics in Washington hereby brings this complaint before the Federal Election Commission seeking an immediate FEC investigation and enforcement action against Frist 2000, Inc., Senator William H. Frist, M. Lee Barfield, Linus Catignani, and Dawn Perkinson for direct and serious violations of federal campaign finance law.

Complainant

2. Citizens for Responsibility and Ethics in Washington is a non-profit, non-partisan organization dedicated to ensuring accountability in public officials.

Respondents

3. William H. Frist, M.D. is a United States Senator from the state of Tennessee, the Senate Majority Leader, and the president of Frist 2000, Inc. Frist 2000, Inc. is the principal campaign committee for Senator Frist's 2000 Senate campaign. Dawn Perkinson is the current treasurer of Frist 2000, Inc. M. Lee Barefield was the treasurer of Frist 2000, Inc. and Linus Catignani was the assistant treasurer of Frist 2000, Inc. at the time of the events described in this complaint.

Factual Allegations

4. In June 2000, Senator Frist took \$1 million of the money that had been contributed to his 2000 Senate campaign and invested it in the stock market. Bob Kemper and

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Tom Baxter, Frist's political funds in disarray: loans, losses raise questions, criticism, *Atlanta Journal and Constitution*, June 12, 2005 (attached as Exhibit A). The money was allegedly invested in a Charles Schwab index fund that soon began losing money. Id.

5. In November 2000, Senator Frist sought to collect \$1.2 million he had lent his 1994 Senate campaign committee, Bill Frist for Senate, Inc. Frist 2000, Inc. had only \$1 million available, however, leaving it without enough money to repay Senator Frist. Senator Frist solved this problem by having Bill Frist for Senate, Inc. and Frist 2000, Inc. jointly take out a \$1.44 million bank loan, at a cost of \$10,000 a month in interest. Senator Frist then used that money to pay himself back. Id.

6. Frist 2000, Inc. did not disclose this debt on its disclosure forms. Instead, Senator Frist's 1994 campaign committee, Bill Frist for Senate, Inc., which was then dormant, declared the loan. Id.; see also Year End Report of Bill Frist for Senate, Inc., Schedule C, filed January 31, 2001.

COUNT I


7. The Federal Election Campaign Act ("FECA") requires each treasurer of a political committee to file reports of receipts and disbursements signed by the treasurer. 2 U.S.C. § 434(a)(2). Included in those reports must be any loans made or received by the political action committee. 2 U.S.C. §434(b)(2)(G) and (H).

8. Loan documents demonstrate that the Bill Frist for Senate, Inc. and Frist 2000, Inc. jointly borrowed \$1.44 million from First Union Bank on November 24, 2000. Promissory Note, November 24, 2000 (attached as Exhibit B). In fact, Senator Frist personally signed the promissory note in two places: as President of Bill Frist for Senate, Inc., and as President of Frist 2000, Inc. Id.

9. Despite the fact that the loan was taken out by both political action committees, only Bill Frist for Senate, Inc. disclosed the loan as required by the FECA. See Year End Report of Bill Frist for Senate, Inc., Schedule C, filed on January 31 2001, *compared with Year End Report of Frist 2000, Inc.*, filed on January 31, 2001.

10. The fact that the \$1.44 million loan was disclosed by one authorized committee and not the other, despite the fact that the two committees jointly took out the loan, suggests that the failure of Frist 2000, Inc. to disclose the loan in its year end report was a knowing and willful violation of the reporting requirements of 2 U.S.C. §434(b).

WHEREFORE, Citizens for Responsibility and Ethics in Washington requests that the Federal Election Commission conduct an investigation into these allegations, declare the respondents to have violated the federal campaign finance laws, impose sanctions appropriate to these violations and take such further action as may be appropriate.

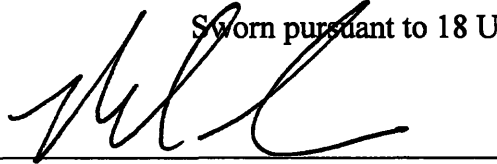


Melanie Sloan
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Verification

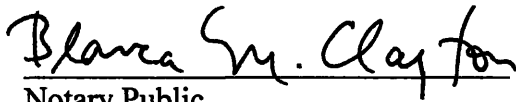
Citizens for Responsibility and Ethics in Washington, acting through Melanie Sloan, hereby verifies that the statements made in the attached Complaint are, upon information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.



Melanie Sloan

Sworn to and subscribed before me this 25th day of June, 2005.



Notary Public

Blanca M. Clayton
Notary Public, District of Columbia
My Commission Expires 04-30-2007

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EXHIBIT A

Westlaw.

NewsRoom

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Atlanta Journal and Constitution (GA)
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June 12, 2005

Section: News

Frist's political funds in disarray Loans, losses raise questions, criticism

BOB KEMPER, TOM BAXTER

Washington -- Election Day 2000 was five months off, but Bill Frist was already in an enviable position. With a fat campaign war chest and only token opposition in what he had decided was his last race for the U.S. Senate, Frist could turn his attention to grander plans.

Frist began focusing on raising record amounts of cash for other Republicans. But while he was picking up political IOUs that could aid him greatly in a run for president in 2008, his own campaign finances took a sharp, and in some ways baffling, turn for the worse.

Hundreds of thousands of dollars Frist's supporters had given him to run for the Senate were dwindling at a rapid rate. Much of that money was lost in a stock market investment that experts say was out of line with the way candidates traditionally invest campaign funds. Frist's campaign also took on more than \$1 million in debt so that it could repay Frist for interest-free loans he made to his campaign six years earlier.

And then, in a decision experts say violated federal campaign regulations, Frist filed reports with the Federal Elections Commission that made it difficult for his contributors and political foes to determine just how bad off his campaign finances were.

Frist's aides, who have given contradictory responses to questions about Frist's finances, deny any wrongdoing. They said Frist, now Senate majority leader, acted within the law and in line with long-accepted campaign practices.

"There's nothing mismanaged about the funds," said Linus Catignani, Frist's longtime finance director.

Through his office, Frist declined several interview requests made over the past two weeks.

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The Frist campaign's reversal of fortunes, traced through bank documents and often incomplete and inaccurate campaign disclosure forms, centers on three key decisions Frist made in 2000 that ultimately drained away much of the money entrusted to him by his supporters.

The situation raises the question of whether Frist, the scion of a wealthy Nashville family and one of the South's premier heart-lung transplant surgeons, was cavalier with other people's money while protecting his own.

Risky investments

Frist's first critical decision, made in June 2000, was to take \$1 million of the contributed money out of the bank, where it was helping earn up to \$170,000 a year in interest, and invest it in the stock market.

Frist put the money into a mutual fund managed by the Charles Schwab investment firm, his campaign said. And that fund, which Frist's aides refused to identify beyond saying it was an index fund, quickly began losing hundreds of thousands of dollars.

Frist's next crucial decisions came in November 2000. Having decided that this would be his last run for the Senate and knowing that by law he could not use his Senate cash in a race for president, Frist wanted to get back \$1.2 million he had lent his campaign in 1994, when he first ran for office.

But Frist 2000 Inc., with just over \$1 million available, didn't have enough money to pay Frist back and continue operating. Frist solved that problem by having his campaign take out a \$1.44 million bank loan, at a cost of \$10,000 a month in interest, and used that money to repay himself.

Assuming the new debt would have drained all the operating funds Frist 2000 had available, according to FEC documents. Yet that didn't happen. Even after taking out such a huge loan, Frist 2000 still looked rich on paper -- much richer than it actually was.

That's because Frist made a third key decision -- one that experts on campaign disclosure call highly questionable -- to not report the new debt on the FEC paperwork filed by Frist 2000, as required by law.

Instead, Frist told the FEC that the \$1.44 million loan was held by another committee he controlled, the **Bill Frist** for Senate committee, which had been around since his first race in 1994. That fund was virtually dormant by 2000, with just \$50,000 in the bank.

Others more careful

It's uncommon but not unheard of for a candidate to invest leftover campaign funds in the stock market. But campaign finance experts said Frist's investment was unusual in its size and in that all of the money went into a single mutual fund.

"I don't recall any candidate that has placed that amount of money in one

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investment that was a stock fund," said Jan Witold Baran, former general counsel to the Republican National Committee and a lawyer specializing in campaign finance.

"It's legal, but investing in a single stock mutual fund of any sort always has risk of loss," he said. "That's why the vast majority of candidates that have a vast amount of cash on hand put that money in money market funds or other conservative investments."

Other senators who put money into the stock market about the same time as Frist fared better.

Former Sen. Tom Daschle (D-S.D.), whom Frist helped defeat in the 2004 elections, invested campaign cash in a Merrill Lynch mutual fund in 2001. That investment went up and down with the market, but by 2004 showed a gain of \$91,000.

Sen. Arlen Specter (R-Pa.) took a very different approach when he invested just over \$1 million of his leftover campaign cash about the same time Frist did. Stephen Hamelin, a Philadelphia lawyer and Specter's campaign treasurer, said Specter wanted to ensure that the principal -- his contributors' money -- was as protected as possible. He opted to spread Specter's money among short-term notes, bonds and some stocks.

"The money wasn't given to us to be stock speculators. It was given to us to run a campaign," said Hamelin, who in 1999 requested and got an FEC legal advisory that still guides candidate stock investments.

Hamelin said he made a profit.

"We were doing this the most conservative way so we didn't lose the principal," he said. "The stock market could have killed you."

'They misreported ...'

Campaign finance experts also described as highly unusual Frist's decision to report the \$1.44 million debt under the name of an old committee rather than his current campaign operation.

It's legal for campaigns to transfer debts and money between two committees as long as both committees report the transfer -- something Frist 2000 failed to do.

"Looking at this, it appears they did not want to show that Frist 2000 was the actual borrower of the \$1.44 million," said Larry Nobel, who worked 23 years at the FEC, 13 as the agency's general counsel.

Nobel was one of two former FEC officials who reviewed Frist's FEC and loan documents at the request of The Atlanta Journal-Constitution.

"It appears to me to be misreporting. They misreported who the actual borrower was. Misreporting is illegal," said Nobel, now executive director of the Center for Responsive Politics, a nonpartisan campaign finance watchdog group. "The question is whether the FEC would do anything about it."

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FEC officials said last week they were examining the Frist documents, but have not reported their conclusions.

Kent Cooper, who worked on candidate disclosure matters for 22 years at the FEC, said it would be "politically savvy" but questionable for Frist to conceal campaign debt.

"I don't feel comfortable with it," said Cooper, now with Political Money Line, a nonpartisan campaign finance watchdog group.

Good idea at the time

Catignani, Frist's campaign finance director, defended Frist's decisions. Frist invested in the stock market expecting to make a profit and, like millions of other investors, was hit unexpectedly hard when high-technology stocks went bust, a recession tightened its grip on the national economy and terrorists plunged Wall Street into chaos, he said.

"Senator Frist made a decision that it was a good opportunity and a good time in the market to make an investment, and his intent was that the money would grow," Catignani said. "Now that didn't happen, but that's all in retrospect."

Catignani said the \$1.44 million loan was reported under the 1994 committee because Frist gave the money to that committee. He noted that both committees were listed on the bank documents for the loan. Those bank documents, however, specifically designate Frist 2000 as the borrower. The 1994 committee was listed as "debtor" on one document. Also, FEC records show that Frist 2000, not the 1994 committee, wrote the check to repay Frist with those loan funds and repaid the \$1.44 million debt in June 2001.

Steven Cook of U.S. Bankcorp in Nashville, the bank that loaned Frist the \$1.44 million, said the Frist campaign had given him permission to confirm that the bank considered the two Frist committees "joint borrowers" on the loan. But when asked why the bank's own documents contradict that statement, Cook said, "I can't go there."

Frist 2000 reported in June 2001 that it had repaid the \$1.44 million loan, but it did not acknowledge that the debt had been transferred from the 1994 committee until three years later.

Frist corrected the filing for Frist 2000 in 2004 after an internal audit of Frist 2000 finances -- a self-evaluation conducted after the FEC initiated its own audit of a third Frist committee, Volunteer PAC or VolPAC, the one Frist uses to raise money for other Republicans.

VolPAC was fined \$10,000 by the FEC for misreporting its finances.

Conflicting accounts

There has been conflicting information about another loan of \$360,000 taken out by Frist's campaign in 2001.

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Newspapers reported that Catignani told them the loan was needed to pay operating expenses after the stock market investment soured.

"Our investments had been made and were losing money so if we had decided to sell the stock while it was down, the losses would have been permanent," Catignani told The Washington Post in December. "Our hope is the market is improving and our losses will become less."

But Catignani told the AJC in an interview and an e-mail that the loan was used to help repay Frist.

"We never took out a loan to have funds to operate on," Catignani said. "The purpose of the loan was not to pay operating expenses. It all stems from the original loan Senator Frist made to the campaign."

Catignani said he had been paying those operating costs -- from credit card and phone bills to nearly \$700 for flowers for former President Ronald Reagan's 2004 funeral -- by withdrawing hundreds of thousands of dollars from the investment fund.

"I agree with you that it's not a smart investment strategy to take dollars out when you're down, but it's also the only dollars I had to spend on political expenses," Catignani said.

But in a third explanation, Catignani said last week that the loan was used for both purposes: the repayment of another loan and operating expenses.

Now only \$290,000 remains of the \$1 million investment, and Frist 2000 owes the bank \$349,0000, Catignani said.

There has also been some discrepancy about when Frist invested in the stock market. Other news organizations that interviewed Catignani reported the investment was made after the 2000 election was over and other campaign accounts were settled.

Catignani told the AJC the same thing in an interview in May. But when told later that FEC records show the investment was made in June 2000, five months before the election, Catignani said, "That is possible. I don't remember confirming a date, actually."

Catignani said later still that he had not intended to claim that the loan was made after Election Day and said "to my knowledge" he had not told any reporters that it had been made after the election.

Frist's management of his campaign funds has already given Democrats ammunition to attack his presidential qualifications as well as Republican initiatives that encourage Americans to invest in the stock market to pay for their retirement, education and health care.

"Those of us who are opposed to private accounts for Social Security have kind of chuckled at the notion of the majority leader not being able to make any headway with his investments," said Daschle, the former Senate majority leader whom Frist

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spent \$226,000 through VolPAC to defeat last year. "If he's having trouble, how do they expect an 82-year-old woman like my mother to be able to do it?"

06/14/05, Page A/02: The last name of Larry Noble, director of the Center for Responsive Politics, was misspelled in a front page story Sunday about Senate Majority Leader Bill Frist's political funds.

----- INDEX REFERENCES -----

COMPANY: FONDS DEQUIPEMENT COMMUNAL; SCHWAB (CHARLES) CORP

Language: EN

OTHER INDEXING: (AJC; ATLANTA JOURNAL; CENTER FOR RESPONSIVE POLITICS; CHARLES SCHWAB; FEC; FEDERAL ELECTIONS COMMISSION; MERRILL LYNCH; PAC; REPUBLICAN NATIONAL COMMITTEE; RESPONSIVE POLITICS; SENATE; US BANKCORP; US SENATE; VOLPAC) (Arlen Specter; Bill Frist; Catignani; Cook; Cooper; Daschle; Frist; Hamelin; Jan Witold Baran; Kent Cooper; Larry Nobel; Larry Noble; Linus Catignani; Loans; Money Line; Newspapers; Nobel; Risky; Ronald Reagan; Specter; Stephen Hamelin; Steven Cook; Tom Daschle; Wall Street)

EDITION: Home; The Atlanta Journal-Constitution

Word Count: 2459

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